

CCRB INVESTIGATIVE RECOMMENDATION

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|---|--|---------------------------|---|---|--|
| Investigator: Enoch Sowah | Team: Squad #1 | CCRB Case #: 201907212 | <input checked="" type="checkbox"/> Force | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input checked="" type="checkbox"/> Injury |
| Incident Date(s) Wednesday, 08/14/2019 1:00 AM | Location of Incident: Inside § 87(2)(b) | Precinct: 47 | 18 Mo. SOL 2/14/2021 | EO SOL 10/1/2021 | |
| Date/Time CV Reported Wed, 08/14/2019 1:39 PM | CV Reported At: CCRB | How CV Reported: Phone | Date/Time Received at CCRB Wed, 08/14/2019 1:39 PM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------------|--------------|
| § 87(2)(b) | § 87(2)(b) | § 87(2)(b) |

| Witness(es) | Home Address |
|-------------|--------------|
| § 87(2)(b) | § 87(2)(b) |

| Subject Officer(s) | Shield | TaxID | Command |
|---------------------------|--------|--------|---------|
| 1. SGT Declan Ludington | 04794 | 953018 | 047 PCT |
| 2. POM Michael Barbetto | 6815 | 954519 | 047 PCT |
| 3. POM James Stalikas | 18382 | 959268 | 047 PCT |
| 4. POM Andrew Distelhurst | 18304 | 958512 | 047 PCT |
| 5. An officer | | | 047 PCT |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|----------------------|-----------|--------|----------|
| 1. LT Gerardo Decaro | 00000 | 938334 | 047 PCT |
| 2. POM Lewis Nunez | 19744 | 958997 | 047 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|--------------------------|---|-----------------------------|
| A.SGT Declan Ludington | Abuse: Sergeant Declan Ludington stopped § 87(2)(b) | § 87(2)(b) |
| B.SGT Declan Ludington | Abuse: Sergeant Declan Ludington detained § 87(2)(b) | § 87(2)(b) |
| C.SGT Declan Ludington | Force: Sergeant Declan Ludington pointed his gun at § 87(2)(b) | § 87(2)(b) |
| D.POM Michael Barbetto | Force: Police Officer Michael Barbetto pointed his gun at § 87(2)(b) | § 87(2)(b) |
| E.POM James Stalikas | Force: Police Officer James Stalikas pointed his gun at § 87(2)(b) | § 87(2)(b) |
| F.POM Andrew Distelhurst | Force: Police Officer Andrew Distelhurst pointed his gun at § 87(2)(b) | § 87(2)(b) |
| G.POM James Stalikas | Discourtesy: Police Officer James Stalikas spoke discourteously to § 87(2)(b) | § 87(2)(b) |
| H. An officer | Abuse: An officer threatened § 87(2)(b) with the use of force. | § 87(2)(b) |
| I.POM James Stalikas | Force: Police Officer James Stalikas struck § 87(2)(b) with an asp. | § 87(2)(b) |
| J.POM James Stalikas | Force: Police Officer James Stalikas used a chokehold against § 87(2)(b) | § 87(2)(b) |
| K.POM James Stalikas | Force: Police Officer James Stalikas used physical force against § 87(2)(b) | § 87(2)(b) |

| Officer(s) | Allegation | Investigator Recommendation |
|------------------------|---|-----------------------------|
| L.POM James Stalikas | Abuse: Police Officer James Stalikas threatened to arrest § 87(2)(b) | |
| M.SGT Declan Ludington | Abuse: Sergeant Declan Ludington failed to provide § 87(2)(b) with a business card. | |
| § 87(2)(g), § 87(4-b) | § 87(2)(g), § 87(4-b) | |

Case Summary

On August 14, 2019, § 87(2)(b) called the CCRB and filed this complaint on behalf of himself.

On August 14, 2019, at approximately 1:00 a.m., inside § 87(2)(b) in the Bronx, Sergeant Declan Ludington of the 47th Precinct stopped and detained § 87(2)(b) (**Allegations A and B: Abuse of Authority**, § 87(2)(g) Sgt. Ludington and Police Officers Michael Barbetto, James Stalikas, and Andrew Distelhurst, all from the 47th Precinct, pointed their guns at § 87(2)(b) (**Allegations C through E: Force**, § 87(2)(g) (**Allegation F: Force**, § 87(2)(g) PO Stalikas spoke discourteously toward § 87(2)(b) (**Allegation G: Discourtesy**, § 87(2)(g) . An officer threatened to use force against § 87(2)(b) (**Allegation H: Abuse of Authority**, § 87(2)(g)). PO Stalikas struck § 87(2)(b) with an asp (**Allegation I: Force**, § 87(2)(g) , and placed § 87(2)(b) in a chokehold (**Allegation J: Force**, § 87(2)(g) PO Stalikas also used physical force against § 87(2)(b) (**Allegation K: Force**, § 87(2)(g) and threatened to arrest him (**Allegation L: Abuse of Authority**, § 87(2)(g) . Sgt. Ludington failed to provide § 87(2)(b) with a business card (**Allegation M: Abuse of Authority**, § 87(2)(g) , § 87(2)(g), § 87(4-b)

No arrest or summons resulted from this incident.

Two cellphone videos and nine police body-worn cameras (BWC) were received in relation to this incident (Board Review 01 – Board Review 11).

Findings and Recommendations

Allegation (A) Abuse of Authority: Sergeant Declan Ludington stopped § 87(2)(b)

Allegation (B) Abuse of Authority: Sergeant Declan Ludington detained § 87(2)(b)

It is not disputed that Sgt. Ludington stopped § 87(2)(b) inside a Deli located at § 87(2)(b) in the Bronx. The circumstances under which § 87(2)(b) was stopped are, however, disputed.

§ 87(2)(b) (Board Review 12) said that he was walking alone in the vicinity of White Plains Road and East 219th Street in the Bronx, and heading home, when he decided to enter a deli and order some food. § 87(2)(b) did not recall what clothes he wore that day, but said he had his cellphone, photo ID, and a gift card in one of his hands. § 87(2)(b) did not speak or interact with anyone prior to entering the deli, nor did he recall having any bulges on his person. The deli clerk was the only person inside the deli when § 87(2)(b) entered. Four plainclothes officers, identified via investigation as Sgt. Ludington, and Police Officers Stalikas, Barbetto, and Distelhurst entered the deli less than a minute after § 87(2)(b) and ordered § 87(2)(b) to show them his hands. § 87(2)(b) who did not recall where his hands were at the time the officers approached, complied, and raised his hands up in the air. The officers told § 87(2)(b) that he fit the description of someone wanted for a crime in the vicinity. The officers did not provide any details regarding the investigation they were conducting, nor did they provide any pedigree description of the alleged perpetrator. § 87(2)(b) told the officers he was not the person they were looking for, and attempted to leave, but one of the officers, § 87(2)(b) did not recall who, said § 87(2)(b) was detained and considered under investigation. One of the officers took the gift card and § 87(2)(b)'s photo ID, and said § 87(2)(b) appeared to be engaged in credit card fraud. § 87(2)(b) who became upset at the officer's accusation, refused to engage with the officers, and said he was being harassed. The officers then said § 87(2)(b) appeared to have a gun, and ordered him to show the officers where he hid the gun. § 87(2)(b) replied that he did not have a gun. Two of the officers stood with § 87(2)(b) while the other two walked around the deli, and appeared to be searching the shelves. § 87(2)(b) did not know what the officers were looking for, nor did he recall if anything was found. He was released approximately 40 minutes later from the deli.

Attempts to identify the deli clerk and obtain surveillance footage from the deli were unsuccessful (Board Review 13).

§ 87(2)(b) recorded a portion of this incident on his cellphone (Board Review 01) and provided a second cellphone video (Board Review 02), which was recorded by an unidentified civilian through a clear window outside the deli, but both videos only capture the conclusion of the incident.

Sgt. Ludington, and Police Officers Stalikas, Barbetto, and Distelhurst recorded portions of this incident on their BWCs. Their footage captures the same incident, but from different angles. Sgt. Ludington's BWC (Board Review 03) shows Sgt. Ludington, PO Stalikas, PO Barbetto, PO Distelhurst, and § 87(2)(b) standing in an aisle inside the deli. § 87(2)(b) and the officers appear to be engaged in an argument. At 00:45, Sgt. Ludington tells § 87(2)(b) that he was stopped because he ran away from the officers and hid inside the deli after throwing some credit cards on the ground. § 87(2)(b) replies that he ran because the officers always stop and harass him. At 02:00, PO Stalikas tells § 87(2)(b) that he was stopped because he was "bouncing back and forth three different times," threw credit cards on the floor, and then ran and hid inside the deli. PO Stalikas tells § 87(2)(b) that the officers did not consider § 87(2)(b)'s behavior to be normal, and that the officers have a responsibility to investigate such behavior. § 87(2)(b) replies that his behavior was normal, and that the officers have no business investigating why he threw away his credit cards. Sgt. Ludington tells § 87(2)(b) that his behavior was not normal, but rather suspicious. At 02:20, § 87(2)(b) asks the officers what they are doing with his cards. Sgt. Ludington replies that they are running the cards to ensure that they are not stolen or fake. At 02:40, § 87(2)(b) asks the officers if they believe the cards are counterfeit. Sgt. Ludington replies, "No, we are just making sure they are not counterfeit." § 87(2)(b) who appears upset and is yelling, tells the officers that the cards are not fake. At 02:58, PO Stalikas and Sgt. Ludington ask § 87(2)(b) why he threw the cards on the ground if they were not fake. § 87(2)(b) tells the officers not to worry, and that it is not their concern what he does with the cards. At 05:25, Sgt. Ludington, PO Barbetto, and the deli clerk walk around the deli, and appear to look through the shelves with their flashlights.

PO Distelhurst's BWC (Board Review 04) at 04:30, captures him telling § 87(2)(b) that it is unusual for people to be walking around with cards that have other people's names on them. At 05:00, PO Distelhurst asks § 87(2)(b) who the card belongs to. § 87(2)(b) replies that it is not the officers' business to know who the cards belong to, and that they belong to "a family member." At 05:33, § 87(2)(b) says to PO Distelhurst not to worry about who the cards belong to, and that they belong to him. § 87(2)(b) then asks PO Distelhurst to return the cards. At 05:39, the camera captures what appears to be a blue Visa card, and shows PO Distelhurst reading a name off the card. PO Distelhurst asks § 87(2)(b) about his relation to Demetrious Leon Williams, which is the name that appears to be listed on the Visa card. § 87(2)(b) replies, "That is my family member. That is all you need to know." PO Stalikas and PO Distelhurst tell § 87(2)(b) that the information he provided is not enough. At 06:30, § 87(2)(b) tells PO Distelhurst that the cards belong to "an elder in my family, who is a human being." At 08:30, § 87(2)(b) asks the officers to return his cards, and that he is not under arrest. PO Stalikas replies that § 87(2)(b) is being detained for investigatory purposes, and that the officers are trying to find out who the cards belong to. At 08:43, PO Stalikas tells § 87(2)(b) that he would have been released "20 minutes ago," if § 87(2)(b) had cooperated and told the officers who the cards belonged to. At 12:53, Sgt. Ludington appears to be searching the shelves behind § 87(2)(b). § 87(2)(b) says to the officers, "What the fuck are you looking for? Ya looking for a gun?" None of the officers respond. At 13:02, § 87(2)(b) tells the officers to "keep looking," and that he "lost that shit." Sgt. Ludington asks § 87(2)(b) what he lost, but § 87(2)(b) does not reply. § 87(2)(b) however, points in different directions, and says to the officers, "over there, and over there." None of the BWC videos capture the officers asking § 87(2)(b) about weapons, nor do they capture them telling § 87(2)(b) that he fit the description of someone wanted for a crime.

Sgt. Ludington, PO Barbetto, and PO Stalikas' testimonies were consistent with each other (Board Review 14 – Board Review 16). They said they and PO Distelhurst were driving northbound on White Plains Road, and were patrolling the neighborhood, which has high incidents of violent crimes such as robberies and shootings, when they all observed § 87(2)(b) walking northbound on the sidewalk. § 87(2)(b) was alone and had one of his hands, the officers did not recall which, tucked inside the waistband of his pants, and appeared to be holding something on his hip. The officers were approximately five to six feet away when they observed § 87(2)(b) and thus did not see what § 87(2)(b) appeared to be holding at his hip, nor did they recall observing any bulges. It was dark outside, but there were streetlights that illuminated the streets. There were also very few people and vehicles outside, which thus gave the officers an unobstructed view of § 87(2)(b). § 87(2)(b) made eye contact and appeared to recognize some of the officers as they drove past him. He immediately changed directions, and began to walk south on White Plains Road, all while having his hand tucked into his waistband. PO Stalikas and PO Barbetto acknowledged having had prior interactions with § 87(2)(b) who according to PO Stalikas was a member of a local robbery gang in the neighborhood, and has thus been arrested multiple times (Board Review 36). § 87(2)(b) continued to change directions approximately three to four times, and then ultimately ran inside a deli, which was a few feet from him, and approximately 10 feet from the officers.

Sgt. Ludington, PO Barbetto, and PO Stalikas then observed § 87(2)(b) take his hand out of his waistband, and appeared to throw something inside the deli. The display windows of the deli were big and clear enough that the officers were able to observe § 87(2)(b) inside the deli while they were outside, but they could not see what § 87(2)(b) threw inside the deli or where he threw it. None of the officers recalled suspecting § 87(2)(b) of any criminality at this point, but said they found § 87(2)(b)'s behavior to be unusual and suspicious. Sgt. Ludington, PO Barbetto, and PO Stalikas all said that the fact that § 87(2)(b) had his hand on his hip, which per their respective experiences was consistent with where civilians and police officers place their firearms, coupled with the fact that § 87(2)(b) changed directions and ran inside the deli upon seeing the officers in a neighborhood that was known for violent crimes, raised their suspicion that § 87(2)(b) was possibly concealing a firearm or contraband. The officers thus collectively made the decision to enter the deli and ensure that whatever § 87(2)(b) appeared to throw away was not a firearm or any other contraband. Sgt. Ludington said that as the supervisor on scene, he ultimately made the decision that the officers enter the deli and investigate § 87(2)(b)'s behavior (hence the reason why the above allegations were pleaded against him).

Sgt. Ludington, PO Barbetto, PO Distelhurst, and PO Stalikas all entered the deli, and were met by the deli clerk, who told the officers that § 87(2)(b) was hiding in the back, and that he threw some items into the shelves when he entered the deli. PO Stalikas, PO Barbetto, and PO Distelhurst all approached § 87(2)(b) in the back, while the deli clerk escorted Sgt. Ludington to the area where § 87(2)(b) had thrown the items. Sgt. Ludington searched the areas of the shelves where the deli clerk directed him, and recovered multiple credit cards with different names, none of which corresponded to § 87(2)(b) an orange, and a small razor blade. Sgt. Ludington and the deli clerk also reviewed the surveillance camera and confirmed that § 87(2)(b) did indeed throw the recovered items into the shelves. Sgt. Ludington did not recall the exact number of credit cards he recovered from the shelves. Sgt. Ludington, PO Stalikas, and PO Barbetto all acknowledged that § 87(2)(b) was not free to leave once the officers approached him, and that he was stopped to allow the officers to investigate what he had thrown into the shelves. Sgt. Ludington, PO Stalikas, and PO Barbetto all denied that § 87(2)(b) was stopped for any reason besides the fact that he ran and threw some items into the shelves of the deli.

Sgt. Ludington approached § 87(2)(b) and together with the other officers attempted to question § 87(2)(b) about the ownership of the cards. § 87(2)(b) however, was extremely uncooperative and acted belligerently towards the officers. § 87(2)(b) yelled at the officers, paced back and forth, refused to answer and/or was evasive to the officers' questions. § 87(2)(b)'s

behavior inside the deli, coupled with the officers' initial observations of him, and the fact that none of the names on the credit cards corresponded to § 87(2)(b) further raised the officers' suspicions that § 87(2)(b) was possibly in possession of stolen or counterfeit cards. The officers thus detained § 87(2)(b) to investigate the authenticity and ownership of the cards. Sgt. Ludington and PO Distelhurst ran the names on the credit cards on their handheld devices to check whether the cards were stolen. The results of the searches were inconclusive since none of the names on the cards matched to any record in the NYPD database. The officers also attempted to check whether the cards were fake, but were unable to do so since their handheld devices were not equipped to perform such searches. Sgt. Ludington thus returned the cards to § 87(2)(b) and allowed him to leave the deli. The entire incident lasted approximately 20 to 30 minutes.

Officers need founded suspicion that criminality is afoot in order to approach, ask, and gain explanatory information. Officers can stop, detain, and question an individual if they have reasonable suspicion that the individual has committed, is committing, or is about to commit a crime, *People v. DeBour*, 40 N.Y.2d 210, 224 (1976) (Board Review 17).

Reasonable suspicion is defined as the quantum of knowledge to induce an ordinarily prudent and cautious person under the circumstances to believe criminal activity is at hand, and such a stop must be predicated on specific, articulable facts, and not vague or unparticularized hunches, *People v. Cantor*, 36 N.Y.2d 106 (1975) (Board Review 18).

None of the videos depict anything that transpired prior to the officers approaching § 87(2)(b) inside the deli. The videos thus do not establish whether the officers observed § 87(2)(b) holding his waistband in a manner that suggested that he was hiding something on his hip, nor do they show § 87(2)(b) run inside the deli and toss items on the ground or in the shelves. The BWC, however, contradicts § 87(2)(b)'s account that the officers stopped him because he fit the description of someone suspected of a crime, and established that the officers told § 87(2)(b) that he was stopped because he ran into the deli, threw credit cards on the ground, and hid from the officers. § 87(2)(b) is also captured in the video acknowledging that he ran from the officers and threw credit cards inside the deli. The video also established that at least one of the names on the cards did not correspond to § 87(2)(b) and that § 87(2)(b) who acknowledged to the officers that none of the names on the cards corresponded to him, refused to answer and was often evasive to the officers' questions about the authenticity and ownership of the cards.

Given the above facts, and the consistency in the testimonies of Sgt. Ludington, PO Stalikas, and PO Barbetto, the investigation credits that the officers observed § 87(2)(b) run inside the deli after observing the officers, and that § 87(2)(b) upon entering the deli, threw something that was on his person inside the deli. § 87(2)(g)

§ 87(2)(g)

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Allegation (C) Force: Sergeant Declan Ludington pointed his gun at § 87(2)(b)

Allegation (D) Force: Police Officer Michael Barbetto pointed his gun at § 87(2)(b)

Allegation (E) Force: Police Officer James Stalikas pointed his gun at § 87(2)(b)

Allegation (F) Force: Police Officer Andrew Distelhurst pointed his gun at § 87(2)(b)

§ 87(2)(b) said that the four officers entered the deli with their guns pointed at him. He did not recall how long the officers had their guns pointed at him.

As previously discussed, attempts to identify the deli clerk, and obtain surveillance footage from the deli were unsuccessful. Additionally, none of the videos captured any interactions between

the officers and § 87(2)(b) prior to entering the deli, and thus did not establish whether the officers entered the deli with their guns pointed at § 87(2)(b)

Sgt. Ludington, PO Stalikas, and PO Barbetto all denied entering the deli with their guns pointed at § 87(2)(b) and said they had no reason to do so.

§ 87(2)(g)

§ 87(2)(g)

Allegation (G) Discourtesy: Police Officer James Stalikas spoke discourteously to § 87(2)(b)

§ 87(2)(b) said that at some point, two uniformed officers arrived. § 87(2)(b) asked one of the officers, who was dressed in a uniformed white shirt, and who § 87(2)(b) addressed as a sergeant, whether the officers were justified in stopping and detaining him. PO Stalikas told § 87(2)(b) to “shut the fuck up,” and called § 87(2)(b) “a fucking dumbass” for suggesting that the white shirt officer was a sergeant. PO Stalikas told him several times to “shut the fuck up.”

Sgt. Ludington’s BWC (Board Review 03), at 01:34, shows Lt. Gerardo Decaro, dressed in a white shirt, and PO Lewis Nunez, dressed in dark uniform, standing a few feet behind § 87(2)(b), PO Stalikas, and PO Barbetto. They appear to be observing the conversation between § 87(2)(b) and the plainclothes officers. At 03:06, PO Distelhurst’s BWC (Board Review 04) shows PO Distelhurst showing something to Lt. Decaro, and telling him that § 87(2)(b) is in possession of a card that has another person’s name on it. § 87(2)(b) is heard arguing in the background with PO Stalikas. At 09:03, PO Stalikas says to § 87(2)(b) “§ 87(2)(b) I know you are fucking playing stupid. I know you know about credit card skimming and all that shit, so stop it.” At 11:10, § 87(2)(b) appears to address the unidentified lineament as a sergeant. At 11:13, PO Stalikas says to § 87(2)(b) “He is not even a sergeant, you fucking idiot.” § 87(2)(b) replies that he is not talking to PO Stalikas. At 11:18, PO Stalikas appears to say to one of the officers, “He is just a fool, and sounds so stupid.” At 13:40, § 87(2)(b) appears to say to the officers, “I am from Jamaica, and if ya play with fire, ya get burned.” At 14:25, PO Stalikas says to § 87(2)(b) “You want to threaten me? Are you fucking nuts?” At 15:09, PO Stalikas says to § 87(2)(b) “Dude you need to fucking watch your mouth, because I am not the one.” None of the BWC videos show any of the officers telling § 87(2)(b) to “Shut the fuck up,” nor do they depict any of the officers calling § 87(2)(b) a “fucking dumbass.”

PO Stalikas initially did not recall using any profanities towards § 87(2)(b) during this incident, but subsequently acknowledged doing so after reviewing the BWC. He said it was not his intention to use profanities towards § 87(2)(b) but that he appeared frustrated with the fact that § 87(2)(b) was extremely uncooperative with the officers, and pretended that he had no idea why the officers stopped him, even though the officers explained multiple times to § 87(2)(b) why he was stopped and why they had to run the cards. PO Stalikas said none of the profanities captured on the BWC were directly targeted towards § 87(2)(b) but were rather a description of § 87(2)(b)’s behavior and demeanor during the incident.

NYPD Patrol Guide Procedure 203-09, states that officers must be courteous and respectful when interacting with members of the public (Board Review 20). However, in prior disciplinary cases, the NYPD has held that the use of profane remarks during stressful situations or while an officer is trying to get a chaotic situation under control, does not constitute misconduct, DAO-DCT Disciplinary Case No. 2017-17005 (Board Review 21).

The video does not depict either of the profanities § 87(2)(b) alleged PO Stalikas used towards him. The footage, however, captured multiple instances where PO Stalikas directly and indirectly used profanities towards § 87(2)(b) and while PO Stalikas may have been frustrated with § 87(2)(b)'s behavior, none of the profanities PO Stalikas used towards § 87(2)(b) served any legitimate law enforcement purpose, nor were they used in the context of any lawful commands. The video also show that the other three officers, who were also reasonably frustrated with § 87(2)(b)'s uncooperativeness, did not use any profanities towards § 87(2)(b) and that the incident in its totality was not chaotic or stressful. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (H) Abuse of Authority: An officer threatened § 87(2)(b) with the use of force.

Allegation (I) Force: Police Officer James Stalikas struck § 87(2)(b) with an asp.

§ 87(2)(b) said that one of the four plainclothes officers, who § 87(2)(b) could not describe, threatened to “break him down.” He also said PO Stalikas, at some point, struck § 87(2)(b)'s shoulder with an asp. § 87(2)(b) did not know why PO Stalikas struck him with an asp and denied physically resisting the officers. § 87(2)(b) did not sustain any injuries as a result of being struck with the asp, but said he sought medical attention that same day at § 87(2)(b) for severe pain to his back and shoulder.

§ 87(2)(b)'s medical records from § 87(2)(b) revealed that § 87(2)(b) arrived at the hospital § 87(2)(b) and that he complained of shoulder, back and head pain, all of which he said was a result of an altercation with the police, where the officers hit him on his head and mid-back with a fist or baton. § 87(2)(b) later denied experiencing any shoulder pain, and also denied experiencing any neck pain or shortness of breath. A physical examination revealed that § 87(2)(b) was not in acute distress, and appeared normal and well developed. § 87(2)(b) was prescribed acetaminophen and was discharged § 87(2)(b)

§ 87(2)(b)

None of the BWC videos, which were activated from the time the officers approached § 87(2)(b) till the time he was released, captures any of the officers threatening § 87(2)(b) with physical or bodily harm, do not depict any of the officers being equipped with asps or batons, nor do they depict PO Stalikas or any other officer striking § 87(2)(b) with an asp or any other object. The videos also do not depict § 87(2)(b) complaining about being hit with an asp or any object.

Sgt. Ludington, PO Barbetto, and PO Stalikas, all denied threatening § 87(2)(b) with bodily harm, denied having asps on their utility belts, nor did PO Stalikas or any other officer strike § 87(2)(b) with an asp.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (J) Force: Police Officer James Stalikas used a chokehold against § 87(2)(b).

Allegation (K) Force: Police Officer James Stalikas used physical force against § 87(2)(b).

§ 87(2)(b) said that PO Stalikas grabbed his shoulders, turned him around so that his back was facing PO Stalikas, and pushed § 87(2)(b) towards one of the shelves. PO Stalikas then placed his hand on the back of § 87(2)(b)'s neck, and further pushed § 87(2)(b) on his neck towards the shelves. PO Stalikas did not contact § 87(2)(b)'s throat, nor did he choke or restrict § 87(2)(b)'s breathing. PO Stalikas then attempted to bring § 87(2)(b)'s arms behind his back, but § 87(2)(b) who did not know why PO Stalikas grabbed him, tensed his upper body. PO Stalikas released his grip off § 87(2)(b)'s arms, and the officers ordered § 87(2)(b) to leave the

deli. He denied being aggressive or physical with the officers, and did not sustain any injuries as a result of the officer's use of force.

PO Distelhurst's BWC (Board Review 03) at 13:00, shows § 87(2)(b) pacing back and forth. At 13:30, § 87(2)(b) repeatedly says to the officers, "I am telling ya, ya play with fire, ya get burned." At 13:37, § 87(2)(b) who is standing approximately two to three feet away from PO Distelhurst, says to PO Distelhurst, "I am from Jamaica, and if ya play with fire, ya get burned." PO Distelhurst in a raised voice tone asks § 87(2)(b) if he just threatened PO Distelhurst. § 87(2)(b) replies that he does not threaten police officers, and that his statement is not a threat. PO Distelhurst replies that § 87(2)(b)'s statement sounds like a threat. PO Distelhurst and § 87(2)(b) argue about whether § 87(2)(b)'s statement is a threat. At 13:54, PO Stalikas, who appears to be behind PO Distelhurst, approaches § 87(2)(b) and attempts to grab § 87(2)(b)'s arms, which are by his side. § 87(2)(b) appears to slightly move his arms, at which point PO Stalikas appears to push § 87(2)(b) on his chest towards the shelves, which is approximately less than a foot away. § 87(2)(b) does not make any movements, and is facing PO Stalikas. At 13:56, PO Stalikas grabs the front of § 87(2)(b)'s throat with his open right hand. PO Stalikas' thumb appears to be on § 87(2)(b)'s windpipe, while the rest of his fingers are on § 87(2)(b)'s neck (Board Review 31).

At 13:57, PO Stalikas removes his hand from § 87(2)(b)'s throat, turns § 87(2)(b) around so that his back is facing the officers, and grabs both of § 87(2)(b)'s arms. PO Stalikas then appears to push § 87(2)(b) on his back towards the shelf. At 14:04, PO Stalikas appears to be holding both of § 87(2)(b)'s arms, which are behind § 87(2)(b)'s back. PO Stalikas asks § 87(2)(b) if he "wants to threaten cops." § 87(2)(b) replies no. Between 14:16 and 14:30, PO Stalikas, who appears to be holding both of § 87(2)(b)'s wrists, pushes § 87(2)(b)'s wrist and arms, which appears to be in a V-shape, upward towards § 87(2)(b)'s mid and upper back. PO Stalikas tells § 87(2)(b) who appears not to be making any movements with his body, that the officers have been overly patient and kind towards § 87(2)(b) despite his aggression, and that § 87(2)(b) needs to stop. At 14:27, PO Stalikas releases his grip of § 87(2)(b).

PO Stalikas said he believed § 87(2)(b) threatened the officers when he said, "If ya play with fire, ya get burned," and that he grabbed and pushed § 87(2)(b) towards the shelves in order to create a safe distance between § 87(2)(b) and the officers, and also to get § 87(2)(b) to calm down and stop being aggressive. PO Stalikas first denied placing his hand on § 87(2)(b)'s throat and neck, but later acknowledged doing so. He said he did not intend to place his hand on § 87(2)(b)'s neck and throat, but that his hand went towards § 87(2)(b)'s neck and throat as a result of § 87(2)(b)'s movements. PO Stalikas denied that his action constituted a chokehold, and denied pressing his hand against § 87(2)(b)'s throat. PO Stalikas also did not recall pushing § 87(2)(b)'s arms up towards § 87(2)(b)'s mid and upper back. PO Stalikas later said that § 87(2)(b) tensed his body, and that he pushed § 87(2)(b)'s arms towards his back because he wanted to gain control of § 87(2)(b)'s arms. He denied pushing § 87(2)(b)'s arms upward as an attempt to inflict pain, but did not recall his intent when taking that action.

NYPD Patrol Guide Procedure 221-01 (Board Review 23) prohibits officers from using chokeholds, which are defined as "any pressure to the throat or windpipe, which may prevent or hinder breathing or reduce intake of air."

PG 221-01 permits officers to use force when it is reasonable to ensure their safety or that of a third person, when it is reasonable to place a person into custody or to prevent escape from custody. In determining whether the use of force is reasonable, officers shall consider the actions taken by the subject, and the immediacy of the perceived threat or harm to the subject, officers, and/or bystanders.

The BWC footage established that § 87(2)(b) stood approximately two to three feet away from PO Distelhurst while the two argued about whether § 87(2)(b) threatened the officers. § 87(2)(g)

§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b) The footage, however, contradicts PO Stalikas'

testimony that he unintentionally grabbed § 87(2)(b)'s neck and throat with his right hand, and that his action was as result of § 87(2)(b)'s bodily movement. The footage establishes that PO Stalikas grabbed § 87(2)(b)'s neck and throat immediately after he pushed § 87(2)(b)'s back against the shelves, and that § 87(2)(b) did not make any bodily movements after he was pushed against the shelves. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

The footage established that § 87(2)(b) did not make any movements once he was turned around and his hands brought behind his back, and even if the investigation credits PO Stalikas' account that § 87(2)(b) tensed his body, the footage shows that PO Stalikas had full control of § 87(2)(b)'s wrist once § 87(2)(b)'s arms were behind his back, and could have been handcuffed if the officers intended to arrest § 87(2)(b). § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (L) Abuse of Authority: Police Officer James Stalikas threatened to arrest § 87(2)(b).

§ 87(2)(b) did not allege that PO Stalikas threatened to arrest him.

PO Distelhurst's BWC (Board Review 03) at 16:20, captures the officers telling § 87(2)(b) that he is free to leave the deli. § 87(2)(b) uses profanities towards the officers while he walks out of the deli. At 16:30, PO Stalikas says to § 87(2)(b) "You could still be arrested, if you don't act right, so get out of here." At 16:43, § 87(2)(b) exits the deli.

PO Stalikas did not recall making any statements about arresting § 87(2)(b) but said he together with the other officers considered § 87(2)(b)'s statement that the officers would get burned for playing with fire as a threat, and that in addition with § 87(2)(b)'s aggressive demeanor throughout the incident could have resulted in § 87(2)(b)'s arrest for disorderly conduct. PO Stalikas also said that the officers never verified whether the credit cards obtained on § 87(2)(b)'s person belonged to him, and that his statement about possibly arresting § 87(2)(b) was in relation to the fact that the officers could have elected to take § 87(2)(b) to the stationhouse for further investigation into the ownership and authenticity of the credit cards.

Sgt. Ludington and PO Barbetto acknowledged hearing § 87(2)(b)'s statement to the officers about being burned for playing with fire, said they considered such statement as a threat, and that § 87(2)(b) could have been arrested for disorderly conduct. Sgt. Ludington also acknowledged that the officers could have brought § 87(2)(b) to the stationhouse for further investigation because they never concluded whether the credit cards belonged to him. Sgt. Ludington, however, did not recall why § 87(2)(b) was not taken to the stationhouse, but said the officers ultimately utilized their discretion not to arrest § 87(2)(b).

A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof: engages in fighting or in violent, tumultuous, or threatening behavior; makes unreasonable noise; uses abusive or obscene language or makes an obscene gesture in public place; without lawful authority disturbs any lawful assembly or meeting of persons; obstructs vehicular or pedestrian traffic; congregates with other persons in a public space and refuses to comply a lawful order of the police to disperse; or creates a hazardous or physical offensive condition by any act which serves no legitimate purpose. NYS Penal Law § 240.20 (Board Review 24).

In People v. Baker, 20 N. Y. 3d 354 (2013), the court established that the mere use of

coarse language towards a police officer is not enough, alone, to constitute the public harm element required for disorderly conduct, and that an isolated verbal exchange between an individual and a police officer, without any other aggressive action or extenuating circumstance, is not likely to constitute disorderly conduct (Board Review 32). The court also established in People v. Stephen, 153 Misc. 2d 382 (1992), that a defendant’s statement to officers, “If you didn’t have that gun and badge, I’d kick your ass; I’d kill you” was constitutionally protected speech and thus, did not constitute disorderly conduct. The court held that absent any indication that the defendant was likely or able to follow through on the threat, the remarks were constitutionally protected because they did not present a clear and present danger and were not “fighting words” that would likely evoke immediate violence or other breach of the peace (Board Review 33).

A person who knowingly possesses stolen property is presumed to possess it with intent to benefit himself or a person other than an owner thereof or to impede the recovery by an owner, NYS Penal Law § 165.55 (Board Review 34).

A person is guilty of criminal possession of a forged instrument when, with the knowledge that it is forged and with the intent to defraud, deceive or injure another, he possesses a forged instrument, which is a written instrument which has been falsely made, completed, or altered, NYS Penal Law §170.20 (Board Review 35).

The BWC footage established that § 87(2)(b) was loud and uncooperative with the officers throughout the entire incident, and that he, at least on three occasions, said to the officers, "If ya play with fire, ya get burned." § 87(2)(b) however, did not at any point during this incident, act aggressively or physically towards the officers, did not give any indication that he intended or was able to carry out such a threat, even if his statement is credited as a threat, and repeatedly told the officers that his statement was not meant to be a threat. Additionally, § 87(2)(b) was outnumbered by the officers on scene, and was inside a deli with no other civilians, except the deli clerk. The footage also shows that none of the six officers on scene, with the exception of PO Stalikas, reacted to § 87(2)(b)'s statement in a manner that suggested that they were concerned about their safety or that of others. § 87(2)(g)

§ 87(2)(g)

Allegation (M) Abuse of Authority: Sergeant Declan Ludington failed to provide § 87(2)(b)
with a business card.

It is undisputed that Sgt. Ludington failed to provide § 87(2)(b) with a business card. Sgt. Ludington did not recall being equipped with business cards, nor did he recall why § 87(2)(b) did not receive a business card, but acknowledged that § 87(2)(b) should have received a business card.

A business card is to be offered for a law enforcement activity, including stops, frisks, and searches of persons, except in cases when a summons is issued, or an arrest is made, NYC Administrative Code 14-174 (Board Review 25).

Given that § 87(2)(b) was not arrested or summonsed as a result of this incident, Sgt. Ludington was required to give § 87(2)(b) a business card, but failed to do so. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- § 87(2)(b)
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- Sgt. Ludington has been a member of service for eight years, and has been a subject in seven CCRB complaints and 15 allegations, one of which was substantiated.
 - Case #201310095 involved a substantiated offensive language allegation. The Board and the NYPD both recommended and imposed instructions, respectively.
- PO Barbetto has been a member of service for seven years, and has been a subject in three CCRB complaints, and five allegations, one of which was substantiated.
 - Case #201707222 involved a substantiated search of a person allegation. The Board recommended command level instructions. The NYPD imposed formalized training.
- PO Stalikas has been a member of service for five years, and has been a subject in five CCRB complaints, and 10 allegations, one of which was substantiated.
 - Case 201904998 involved a substantiated discourtesy word allegation. The Board recommended command level instructions. The NYPD has yet to impose a penalty.
- § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) elected not to mediate this complaint.
- As of April 4, 2020, the New York City Office of the Comptroller had no record of a Notice of Claim being filed in regards this to complaint (Board Review 29).

- § 87(2)(b)

Squad No.: 1

Investigator: Enoch Sowah Inv. Sowah 02/08/2021
Signature Print Title & Name Date

Squad Leader: Mgr. Joy Almeyda 3.5.21
Signature Print Title & Name Date

Reviewer:
Signature Print Title & Name Date